

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Docket No. 04-10949-NMG

_____	)
ALICE KIEFT,	)
Plaintiff,	)
	)
v.	)
	)
AMERICAN EXPRESS COMPANY,	)
ET AL.,	)
Defendants.	)
_____	)

**AFFIDAVIT OF COLEEN A. LYONS**

I, Coleen A. Lyons, hereby depose and state as follows:

1. I am employed by American Express Company ("American Express") as a Benefits Manager. In that capacity, I have custody and access to the books and records of American Express relating to Alice Kieft, a former employee of American Express.

2. My personal knowledge, familiarity with American Express policies and practices, and the books and records maintained by American Express in the regular course of business form the basis for this affidavit.

3. Alice Kieft was initially hired on October 3, 1985 by American Express. She left American Express's employment in June of 1995. She was rehired on September 2, 1996. In 2002 and 2003, she was a Travel Counselor Floater, which is also known as a Field Staffing Support Specialist, and her salary was \$41,551.74. At no time did she have a written contract with American Express for her employment, but instead she was an "at-will" employee. She was terminated by American Express on October 14, 2004.

4. American Express's employment policies, including the Salary Continuation Benefit program were outlined in 2002 and 2003 in a personnel manual that included the following disclaimer:

Employment with American Express is not for an indefinite duration and may be terminated by either the employer or the employee, at any time for any reason... These guidelines do not represent a guarantee of continued employment and do not form an employment contract.

American Express does not consider the policies in the personnel manual to be part of an employment contract for an employee, and has changed the policies' terms in the past.

5. American Express provided a Salary Continuation Benefit program in 2002 and 2003 to its employees. Attached hereto as Exhibit 1, and stamped as KIEFT/AMEX 00268-00274 and KIEFT 00001 – KIEFT 00018, is a copy of the Summary Plan Description for the Salary Continuation Benefits program and a description of the Salary Continuation Benefit policy. The Salary Continuation Benefit program was an employment policy subject to change, as described in these documents. The policy for the Salary Continuation Benefit program also contained the following disclaimer:

The Company reserves the right to make changes in, or discontinue, Company policies, compensation plans, benefits and programs as it deems appropriate, and these changes may be implemented even if they have not been communicated in this (or by change to this) document or otherwise. This memo does not create a contract of employment between the Company and any employee.

6. Attached hereto as Exhibit 2, and stamped as KIEFT/AMEX 00224 – 00242, is a copy of American Express Administrative Information (Health & Welfare Plans) Summary Plan Description ("Administrative Information"). The Administrative Information, among other things, contains information about how to appeal adverse benefit determinations for American Express policies and plans, including Salary Continuation, Long Term Disability and Life. It also contains the following disclaimer:

The Plans described here may be amended or even terminated by the Company at any time without prior notice to or consent by employees. These SPDs do not create a contract of employment between the Company and any employee.

These documents and descriptions were provided to American Express employees to describe the programs.

7. The Summary Plan Descriptions of the Salary Continuation Benefit program, the Long Terms Disability Plan and Life Insurance Plan were posted on the internal American Express website in April of 2002 and April of 2003. In addition, employees were advised via a postcard mailed to their home address that they could access the documents online, or they could call Employee Online Services to request a hard copy.

8. American Express also provided a Long Term Disability Insurance Plan to its employees in 2002 and 2003. Attached hereto as Exhibit 3, and stamped as KIEFT/AMEX 00243 – 00251, is a copy of the Summary Plan Description for the Long Term Disability Insurance Plan. The American Express Long Term Disability Plan is a Health and Welfare Benefit Plan. Attached hereto as Exhibit 4, and stamped as KIEFT/AMEX 00202 – 00222, is a document which describes participants in the Health and Welfare Benefit Plans, including the Long Term Disability Plan and the Life Insurance Plan, entitled American Express Participation Section, Summary Plan Description. (“Participation Section”). These documents were also provided to American Express employees.

9. American Express provided a Life Insurance plan to its employees in 2002 and 2003. Attached here to as Exhibit 5, and stamped as KIEFT/AMEX 00252 – 00267, is a copy of the Summary Plan Description for the Life Insurance Plan. Similarly, these documents were provided to American Express employees, including Alice Kieft.

10. Metropolitan Life Insurance Company (“MetLife”) provided a Group Benefits Plan Insurance Policy to American Express Company for the Long Term Disability and Life Insurance plans. Attached hereto as Exhibit 6, and stamped as KIEFT/AMEX 00275 – 00386, is a copy of the MetLife Insurance Policy. Under these plans, employees could purchase optional long-term disability insurance and life insurance coverage. Alice Kieft had basic coverage of one times her salary under the Life Insurance Plan, and did not purchase any optional life insurance in 2002 or 2003. Accordingly, she did not pay any premiums in 2002 or 2003 for optional life insurance.

11. MetLife administered requests for salary continuation leave benefits for the Salary Continuation Benefit program in 2002 and 2003. MetLife was also the Claims Administrator for the Long Term Disability Insurance Plan and the Life Insurance Plan in 2002 and 2003.

12. Under the Salary Continuation Benefit program, and under the Long Term Disability Insurance and Life Insurance Plans, in the event the participant’s claim was denied by MetLife, the participant could appeal the decision to MetLife within a specified time period. The time period for appeal of a Long Term Disability Claim was 180 days from receipt of notice. The time period for appeal of a Life Insurance Claims was 60 days from receipt of notice. In the event the participant’s appeal was denied by the Claims Administrator under the Long Term Disability and Life Insurance Plan, the participant had a second level of appeal to the Plan Administrator, the American Express Employee Benefits Administration Committee (“EBAC”), within the same specified time period after notice of the appeal decision. As the Salary Continuation Benefit program was administered in 2003 with respect to Alice Kieft’s claim for salary continuation benefits, her claim was again reviewed by American Express after her appeal was denied by MetLife.

13. Attached hereto as Exhibit 7, and stamped as KIEFT/AMEX 00462-00463, KIEFT/AMEX 00458-00459, KIEFT/AMEX 00456-00457, KIEFT/AMEX0052-000055, KIEFT/AMEX 0056, KIEFT/AMEX 00018-00041, KIEFT/AMEX 00002, KIEFT/AMEX 00042, KIEFT/AMEX 00003 – 00008, and KIEFT/AMEX 00001; is a complete set of correspondence with American Express arranged in chronological order relating to Alice Kieft's claims. To the best of my information and belief, and to the best of American Express's information and belief, with the exception of duplicates of certain medical records and correspondence received by Metropolitan Life Insurance Company ("MetLife"), these documents represent true copies of all correspondence received or generated by American Express in connection with Alice Kieft's claims for salary continuation benefits, long term disability benefits, or life insurance benefits currently in its possession. The personal identifiers, such as Social Security number and birth date have been redacted.

14. A review of the records of the EBAC of American Express, reveals no records relating to a claim for long term disability benefits or life insurance benefits for Alice Kieft. The only American Express appeal records relating to a claim for Alice Kieft relate to an appeal of the denial of salary continuation benefits, which was appealed on August 22, 2003

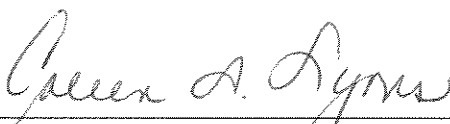
15. Under the Salary Continuation policy, an employee was entitled to a maximum of 26 weeks of Salary Continuation Benefit payments during a twelve month rolling period.

16. After MetLife denied Alice Kieft's claim for Salary Continuation benefits beyond January 2, 2003, her attorney filed a Second Level of Appeal with American Express with respect to her claim for Salary Continuation benefits on August 22, 2003. See attached Exhibit 7, KIEFT/AMEX 00018 - 00041.

17. Following receipt of her attorney's request for a Second Level of Appeal of the Salary Continuation benefits, American Express forwarded the medical records relating to Alice Kieft to Elite Physicians Ltd., a division of Network Medical Review for an independent review to determine her level of functionality. The medical records were reviewed by Stuart Kaplan, M.D., Board Certified in Rheumatology and Internal Medicine. Dr. Kaplan's report is attached to the affidavit at Exhibit 7, KIEFT/AMEX 00003 – 00008.

18. Following this review, American Express upheld MetLife's decision to deny Alice Kieft's salary continuation benefits beyond January 2, 2003, and notified plaintiff's attorney by letter of October 6, 2003.

SIGNED under the pains and penalties of perjury this 23 day of February, 2006.

  
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Coleen A. Lyons